

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

support

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**FILE:**B-208722; B-208722.2**DATE:** August 12, 1983**MATTER OF:** Logistical Support, Inc.; Jets  
Services, Inc.**DIGEST:**

1. Protests against the technical evaluation of proposals and contract award to an offeror proposing a higher cost than the protester's is denied where the contracting agency's determinations have not been shown to be unreasonable or inconsistent with the evaluation criteria contained in the solicitation.
2. Where proposal submitted by a small business concern was reasonably determined to be technically unacceptable, contracting agency was not required to refer question of offeror's responsibility to the Small Business Administration.
3. Protest that discussions were not meaningful is timely since it was raised within 10 days after the protester learned the reasons--relating to issues which allegedly were not mentioned at the discussions--as to why its proposal was rejected.
4. Meaningful discussions were held where the contracting agency identified those areas in the protester's proposal which it considered deficient and afforded the protester the opportunity to correct those deficiencies in a revised proposal.
5. The protester's disagreement with the contracting agency over the relative merits of its technical proposal does not render the agency's evaluation unreasonable or otherwise provide GAO with a basis to question the evaluation.

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Logistical Support, Inc. (LSI), and Jets Services, Inc. (Jets), protest the award of a firm, fixed-price contract to Crothall America, Inc. (Crothall), under request for proposals (RFP) No. DAAG60-80-R-0751, issued by the United States Military Academy, West Point, New York. The RFP solicited offers for food service and related custodial services at the Academy. LSI and Jets argue that the award to Crothall at a higher cost was improper.

We deny the protests.

Ten firms submitted proposals, and the contracting officer reports that, after an initial review, two of the 10 proposals were determined to be unacceptable. LSI's and Jets' proposals were considered marginal, but within the competitive range. Discussions were then held with the remaining eight offerors. After the discussions, letters were sent to the eight offerors detailing the deficiencies that had been previously discussed with them. All of the remaining eight offerors submitted best and final offers, which were then evaluated. The Army evaluated each proposal by assigning scores under the RFP's evaluation criteria which were listed in descending order of importance, as follows: Management (including Phase-In Plan), Technical, Quality Control, and Price. After evaluating best and final offers, the Army was of the view that the technical proposals of Jets and LSI were unsatisfactory. Six other firms were determined to have acceptable proposals. All proposals were evaluated by adding the total price for all options to the basic price. Crothall's total cost for 9 months and four 1-year option years was \$8,786,629, and its proposal was determined to be the most advantageous to the Government, price and other factors considered.

The contracting officer reports that the Government's requirement for mess attendant service was such that no delay in overall service, delays in providing service at a particular meal, or short-falls in performance could be accepted. The requirement is to provide mess service for approximately 4,400 cadets, who enter the dining room at the same time, take their seats at the same time and must be served and finish their meal in approximately 30 minutes. Further, due to the feeding method--family style for approximately 440 tables simultaneously--sanitary and hygiene control was essential. The Government therefore was concerned with supervisor and mess attendant staffing throughout the operating hours.

Offerors were given detailed instructions as to the format and the information that were required to be submitted in their proposals. In particular, section "M," of the RFP required all offerors to:

"State how you plan to organize, staff, and technically manage to meet the requirement of each appendix and state the means you will utilize to ensure satisfactory performance. The plan should utilize flow diagrams, work breakdown structures, matrices, and other similar devices. The following items must be included.

"(1) Organization - State how you plan to provide overall supervision and management.

"(2) Work Controls - Discuss your plan for monitoring, controlling, and scheduling work assignments to the functional areas.

"(3) Staffing Concepts - explain your staffing concepts which permit flexibility to meet shifting workloads and quick response capability."

During the negotiations with LSI, the Government pointed out the critical nature of the conversion date to a contractor-run operation. The contracting officer states that considerable discussion was directed to the point that the staffing of the program was very critical because the requirement was "labor intense." The Government expressed its concern about the staffing plan and indicated that the proposed staffing for the waiter, scullery, and custodial functions was inadequate without clear documentation of what "efficiency techniques" LSI intended to use.

After evaluating LSI's best and final offer, the Army determined that the company's work scheduling plan and staffing proposal were "unrealistic and unworkable." The staffing in many areas was considered low, for example, waiters for the "academic" evening meal were shown as 31. But the RFP provided that the minimum table requirement is normally 400 with a mandatory waiter-table ratio of one to 10, resulting in 40, not 30, waiters required.

Consequently, LSI's proposal was rejected as being technically unacceptable.

LSI basically disagrees with the Army's judgment that its proposal was technically unacceptable. LSI also contends that the rejection of its proposal was tantamount to a finding that LSI was nonresponsible and that this alleged nonresponsibility decision should have been referred to the Small Business Administration (SBA) for a final decision.

It is not the function of our Office to evaluate technical proposals or resolve disputes over the scoring of technical proposals. Decision Sciences Corporation, B-182558, March 24, 1975, 75-1 CPD 175. In evaluating proposals, contracting officers enjoy a reasonable range of discretion in determining which offer should be accepted for award, and their determinations will not be questioned by our Office unless there is a clear showing of unreasonableness, an arbitrary abuse of discretion, or a violation of the procurement statutes and regulations. METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44.

LSI states that its presentation covered "25 services-conditions" which had to be met. LSI indicates that the labor hour coverages for "any point in time" were tailored to the services for those periods and met the Government's needs. The specifications, in LSI's view, were for services to be provided at certain times and frequencies, not for "man days, man years, or a manning authorization document profile."

On the basis of our review of the record, we believe the contracting officer's rejection of LSI's proposal as technically unacceptable is reasonably supported. As noted above, the Government expressed its concern about LSI's staffing plan and pointed out several areas where its proposed staffing was considered inadequate and unrealistically low. LSI was advised that without clear documentation of what efficiency techniques it planned to use, the staffing for the waiter, scullery and custodial workers would be considered by the Government to be inadequate. Nevertheless, LSI submitted what the Army considered to be an unacceptable final offer. Therefore, we consider that LSI is merely disagreeing with the Army's evaluation without showing that the evaluation is unreasonable.

As to the question whether the rejection of LSI's proposal had to be referred to the SBA, the Army takes the position that there was no requirement for referral since LSI's proposal was determined to be technically unacceptable, not that LSI was found to be nonresponsible.

No small business concern may be denied an award because of nonresponsibility without referral by the agency to the SBA for a final decision. But when responsibility-related factors are identified in an RFP as bearing on proposal evaluation, as was the case here, a finding of technical unacceptability is a question of proposal evaluation and is not a nonresponsibility determination requiring referral to the SBA. See R.H. Ritchey, B-205602, July 7, 1982, 82-2 CPD 28.

Consequently, we deny LSI's protest.

#### Jets' Contentions

Jets contends that its protest was timely filed--contrary to the Army's position--and that the contracting activity failed to conduct meaningful discussions with it. Jets also contends that the agency evaluated its proposal in an arbitrary and unreasonable manner, including determining that the staffing proposed by Jets was inadequate.

#### Timeliness

The Army argues that Jets' protest is untimely under section 21.2(b)(2) of our Bid Protest Procedures, which requires protests to be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier. The Army refers to Jets' August 20, 1982, letter in which the company first claimed that the Army failed to conduct meaningful discussions. Therefore, the Army argues that the August 20 protest was untimely since it was not filed within 10 days after the discussions--held with Jets on June 28, 1982.

Jets responds to this argument by stating that it was not aware that meaningful discussions had not taken place until the Army gave a detailed explanation of its reasons for selecting Crothall on August 19, 1982. It was only at that meeting that Jets learned that its proposal had been rejected on the basis of deficiencies that were not allegedly disclosed during negotiations. The Army has not contradicted Jets' response; therefore, we agree that the protest is timely.

The contracting officer reports that the Army had some difficulty in evaluating Jets' initial proposal and that, in fact, it did bring this difficulty to Jets' attention during negotiations with the company. As stated by the contracting officer:

"Although Jets [initial] proposal outlined proposed numbers of employees for each position, these positions did not equate to full [Time positions] in the cost section of its proposal. For example, 90 waiter positions were shown on page 25; however, the cost proposal only equated to 72 full time equivalents. Jets was asked to explain its staffing concept through the use of a work schedule \* \* \*. It was thought this would enable the Government to more easily evaluate the proposal and determine the offeror's capability of performing the requirement with the staffing it proposed. Part time employees were to be utilized. However, the proposal was not clear to what extent they would be used, and what types of shifts they were intended to work. The contractor was advised that its proposal did not identify any staffing for the custodial function. This area was discussed. The contractor was advised of the prohibition of interchanging custodians and waiters in the same shift. \* \* \* These matters were discussed with [Jets] and [Jets' representative] advised they would be addressed in Jets' best and final [offer]."

According to the Army, Jets' "best and final" offer contained a work scheduling plan which was determined to be "unrealistic and unworkable." This determination resulted in a finding that the best and final offer was "technically unsatisfactory."

The Army has explained its reasons for the rating of Jets' final offer, as follows:

"Jets' best and final offer included a work scheduling plan prepared to address the staffing deficiencies discussed during negotiations. This plan revealed new problems that had not been discernible at the time of negotiations. Scheduling charts indicated periods when there would be no supervisors present in the Cadet Mess Hall. Inadequate staffing was proposed for clean up after the lunch meal. Custodial staffing was inadequate to perform required functions during the week. Scullery staffing was inadequate for clean up after Sunday Brunch."

Jets argues that the Army was in a position to discover several of these alleged deficiencies at the negotiations held with Jets when Jets offered to show the Army its "manning charts," but the Army refused to look at these charts then. In reply, the Army says that at the negotiations, Jets presented a "working copy of its Manning charts," but that the "Government was not then in a position to make a detailed evaluation of the charts" since there were six Army representatives at the meeting and there was only one set of charts--thereby making it "very difficult for the Government officials to make an adequate evaluation." The Army further states that had Jets submitted the chart with its original proposal, there would have been adequate time for the Army to have evaluated the chart prior to negotiations and that Jets showed a lack of diligence--which Jets denies--in not submitting the chart with its initial proposal.

Section "M" of the RFP, above, clearly called for an offeror to state how it planned to organize and staff the work. Also, the RFP stated that the offeror's plan "should utilize flow diagrams, work breakdown structures, matrices, and other similar devices." Given this wording, we consider that offerors should have known that their initial proposals were to contain sufficiently detailed information as to permit the Army to determine the adequacy of an offeror's staffing. We understand the Army's position to be that Jets' initial proposal could not be assessed because of its failure to contain the staffing information, required in section "M." We see no basis in the record to disagree with the Army's position. Moreover, any protest against the Army's decision not to evaluate the "manning

charts," which Jets submitted at the negotiations, should have been (but was not) filed within 10 working days from the date of the negotiations (June 28, 1982) in order to be considered timely. Therefore, any protest by Jets now that the Army improperly refused to evaluate the charts which it submitted during negotiations must be considered to be untimely and will not be considered.

Further, it seems clear that the Army indicated its concern to the company about Jets' staffing--especially by asking the company to submit a "Work Scheduling Chart" in its final proposal.

It is well settled that the content and the extent of the discussions needed to satisfy the requirement for meaningful discussions are primarily for the procuring agency to determine and that we will not question the determination unless it is clearly without a reasonable basis. Austin Electronics, B-180690, July 26, 1974, 74-2 CPD 61. Therefore, and considering the Army's position, we reject Jets' argument that the Army did not conduct meaningful discussions with the company concerning its staffing proposal. Given the significance of "staffing," we need not consider the other "meaningful discussions" issues raised by Jets since, if the Army's analysis of Jets' final staffing approach was otherwise sound, Jets' proposal was properly excluded from the competition for this reason alone.

Jets argues, however, that, apart from the issue of meaningful negotiations, the Army's analysis of its best and final offer on staffing was erroneous. Specifically, Jets argues that it did propose required supervision and that its cleanup, custodial, and scullery staffing should have been found to be acceptable.

As to supervision, Jets admits that while its proposal "contained periods when no [cafeteria] wing supervisors would be present, there are no times during meals when a wing is without a wing supervisor." On this point, Jets notes that section "C," paragraph 1.3.8, of the RFP provides that "wing supervisors must be assigned to wings whenever the wings are in use." And Jets argues that this sentence means that supervision is to be present in the wings only when meals are being consumed there and that Jets' provision for supervision only during meal consumption therefore was permissible under the RFP.



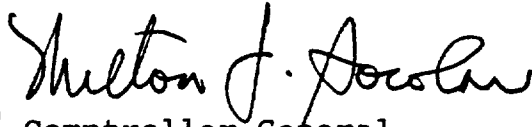
By contrast, the Army notes that paragraph 1.3.8 of the RFP states that supervision is required when a wing is "in use" and argues that the wings are also "in use" during "pre-meal set-ups and post-meal cleanup." The Army also notes that section "C," paragraph 1.3.1, of the RFP provides that the contractor's "workforce shall be adequately supervised at all times" and that this paragraph adds strength to the Army's position that Jets' decision not to provide supervision for employees in the cafeteria wings except during mealtimes was unacceptable. According to the Army, there are "at least ten performance situations [described in Jets' proposal] when waiter/waitresses are unsupervised" during "pre-meal set-ups and post-meal clearing."

We agree with the Army's analysis of the "supervision" issue since it seems clear that premeal and postmeal employee activities show that the wing cafeterias are also "in use" during those times and that these employee actions are "workforce" activities for which supervision is to be provided under the RFP.

As to adequate staffing in the areas of "clean-up, custodial, and scullery," Jets insists that the Army has misread its proposal. The Army denies that there has been any misreading and insists that Jets' manning proposal was simply deficient. For example, in the area of custodial services, the Army insists that there is a "total of two hours during [Jets'] Saturday workshift [when] there is no refuse attendant/custodian on duty, which indicates that no refuse/custodian work could be performed during that period." Jets insists that Saturday cleanup requires less labor because weekend lunches are "staggered over a longer time period." In our view, Jets is simply disagreeing with the Army's technical evaluation in this area, but Jets has not shown that evaluation to be unreasonable. Moreover, we have held that a disagreement between a protester and a contracting agency over the relative merits of a technical proposal does not render the agency's evaluation unreasonable or otherwise provide us with a basis to question the evaluation. Photonics Technology, Inc., B-200482, April 15, 1981, 81-1 CPD 288. Therefore, and given the importance of staffing and the defects found in Jets' staffing proposal, we cannot question the exclusion of the proposal because of the rating in staffing alone. Therefore, we need not consider the issues raised by the protest concerning the evaluation of Jets' proposal in other areas.

Since Jets' proposal was technically unacceptable, the fact that the company's price was lower than Crothall's price does not call into question the propriety of the award.

We deny Jets' protest.

for   
Comptroller General  
of the United States